

THE PARAMETERS OF POLITICAL ACTIVITIES FOR REGISTERED CHARITIES

*By Jennifer M. Leddy**

A. INTRODUCTION

The Policy Statement on Political Activities by the Canada Revenue Agency (“CRA Policy Statement”) affirms that charities may communicate with the public, as well as elected representatives and public officials, on issues of social concern, recognizing that:

“Canadians benefit from the efforts of charities and the practical, innovative ways they use to resolve complex issues related to delivering social services. Beyond service delivery, their expertise is also a vital source of information for governments to help guide policy decisions. It is therefore essential that charities continue to offer their direct knowledge of social issues to public policy debates.”¹

The CRA Policy Statement also affirms that charities which participate in social policy debates much do so within certain parameters. In setting out the parameters, the Policy Statement draws distinctions between *Charitable Purposes and Political Purposes*; *Charitable Activities and Political Activities*; and *Permitted Political Activities and Prohibited Political Activities*. As will be explained in this *Charity Law Bulletin*, everything that appears to be “political” is not necessarily political.

In brief, registered charities are required to have exclusively charitable purposes and to further those purposes through charitable activities carried on by them. An organization that includes a political purpose in

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¹ Canada Revenue Agency (CRA), Policy Statement, Political Activities, CPS – 022, September 2, 2003, Section 2 This Bulletin is based on CRA’s Policy Statement which in turn is based on subsections 149.1 (6.1)(6.2) of the *Income Tax Act* and on general principles of charity law and court decisions that define what is charitable and what is political.

its governing objects will not be registered as a charity. This is so whether the organization has a single political purpose or only one political purpose among several charitable purposes. Even if a charity has no express political purpose, its activities will be examined to see if what it is actually doing indicates that the charity has adopted a political purpose. Charitable organizations can, however, engage in non-partisan political activities within certain limits allowed by law.

B. THE DIFFERENCE BETWEEN CHARITABLE PURPOSES AND POLITICAL PURPOSES

All charitable organizations are required to have exclusively “charitable purposes”, which according to common law are classified into four categories: the relief of poverty, the advancement of education, the advancement of religion and other purposes that are beneficial to the community in a way that the law regards as charitable. The charity must also be established for the public benefit.

According to CRA’s Policy Statement, the courts have determined “political purposes” to be those that seek to:

- ◆ further the interests of a political party; or support a political party or candidate for public office; or
- ◆ retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

The rationale for courts prohibiting charities from pursuing “political purposes” is that the courts would have to assess whether the purpose is for a public benefit and that is a role for Parliament.

For example, an organization set up to relieve poverty by changing legislation that affects the homeless would have a political not a charitable purpose. By contrast, and as will be seen later, an organization set up to relieve poverty by providing social housing, food and other necessities and occasionally seeking to improve related legislation or policies would be considered charitable.

C. CHARITABLE ACTIVITIES ARE PERMITTED WITHOUT LIMITS

A charitable activity is considered by CRA to be an activity undertaken to achieve or further a charitable purpose. The CRA Policy Statement provides that communication with the public or an elected representative or public official is charitable in the following circumstances.

1. Public Awareness Campaigns

The purpose of a public awareness campaign is to inform the public about the work of a charity or an issue related to that work. This activity will be presumed to be charitable, provided it is connected and subordinate to the charity's purposes, is well reasoned and does not contain information that charity knows or ought to know is false, inaccurate or misleading. Public awareness campaigns are distinct from advancing education as a charitable purpose, which requires some form of structure and targeted attempt to educate others as well as an objective presentation of viewpoints to the contrary.

2. Communicating With an Elected Representative or Public Official

The CRA Policy Statement makes it clear that not every communication with an elected representative or public official is a political activity. In fact, representations to elected representatives or public officials, whether invited or not, are considered charitable "*even if the charity explicitly advocates that the law, policy, or decision of any level of government in Canada or a foreign country ought to be retained, opposed, or changed.*"² These representations must, however, relate to an issue that is connected to the charity's purposes, be well reasoned, and not contain false, inaccurate or misleading information.

Releasing the text of the charity's presentation to the public through a website, media release or newsletter will also be considered charitable; provided that the full text of the presentation is made available and there is no *explicit call to political action* by the public in either the text or reference to the text. If there is a call to political action, however brief, all of the resources used to create the text could be considered devoted to a political activity.

A distinction is, therefore, made between a charity offering its expertise to elected representatives in a forum such as a parliamentary committee or to an official in a governmental department, and a charity calling on others to persuade elected representatives to retain, oppose or amend a particular law. Presumably, this different approach is related to the recognized expertise of charities with respect to social issues, referred to at the beginning of this bulletin. It also reflects the reality that elected representatives and public officials usually want some practical advice about legislative initiatives, which may include concrete suggestions about the wording of draft legislation or advice on the

implications of retaining or defeating a legislative proposal. In other words, they want to know what the charity thinks should be done with the legislation based on their expertise or experience in the area. Limiting charities' participation in this process could hinder public policy development.

3. Examples of Charitable Activities

A home for women who are abused could conduct a public awareness campaign by public service announcements or by creating a website informing the public about the various aspects of its work. A religious leader could deliver a sermon or pastoral message on a topic such as marriage or welcoming refugees from a faith perspective.

D. PERMITTED POLITICAL ACTIVITIES WITHIN LIMITS

A charity may take part in political activities if such activities are: non-partisan; connected and subordinate to the charity's purposes; and fall within the expenditure limits under the *Income Tax Act*.

1. Definition of Political Activity

The CRA Policy Statement presumes an activity to be "political" if a charity:

- ♦ explicitly communicates a call to political action – (i.e. encourages the public to contact an elected representative or public official and urges them to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country);
- ♦ explicitly communicates to the public that the law, policy, or decision of any level of government in Canada or a foreign country should be retained (if the retention of the law, policy or decision is being reconsidered by a government), opposed, or changed; or
- ♦ explicitly indicates in its materials (whether internal or external) that the intention of the activity is to incite, or organize to put pressure on, an elected representative or other public official to retain, oppose, or change the law, policy, or decision of any level of government in Canada or a foreign country.

2. Examples of Permitted Political Activities

A charity established for the resettlement of refugees, organizes a rally on Parliament Hill or buys a newspaper add in support of or opposition to a proposed law.

² CRA Policy Statement, supra, section 7.3

A church leader issues a statement on a topic from a faith perspective and calls on church members to contact their elected representative to pressure them to support or oppose a particular law.

3. Expenditure Limits on Permitted Political Activities

Unlike charitable activities, there are limits on the resources that can be expended on political activities. The *Income Tax Act* requires a charity to devote “substantially all” of its resources to charitable activities, which usually means 90%, leaving 10% available for political activities, if desired. The CRA Policy Statement provides some flexibility for smaller charities, offering a higher percentage ranging from 12% to 20% for charities which have an income ranging from \$50,000 and \$200,000. In limited circumstances, expenditures on political activities can be averaged over a number of years.

While the Act does not define “resources”, CRA considers “resources” to include the total of a charity’s financial assets as well as everything the charity can use to further its purposes, such as staff, volunteers, directors, premises and equipment. It is important for charities to develop a consistent method of keeping track of expenditures on political activities.

E. PROHIBITED POLITICAL ACTIVITIES

Partisan political activities are totally prohibited. According to the *Income Tax Act* and the CRA Advisory on Partisan Political Activities,³ partisan political activity involves the “direct or indirect support of, or opposition to, any political party or candidate for public office.”

A “candidate for political office” is different from an “elected representative,” but support or opposition of an “elected representative” may still be seen as “direct or indirect support or opposition to any political party.”

The CRA Advisory reminds charities that “during election campaigns CRA steps up monitoring of activities of registered charities and will take appropriate measures if a registered charity undertakes partisan political activities....Charities engaging in partisan political activities risk being deregistered.”

³ See footnote 1 and CRA Advisory on Partisan Political Activities, Sept. 24, 2007

The following are some Do's and Don'ts for charities, particularly around election time – see the CRA Advisory for more detail.

1. DON'TS

- ♦ **Don't** make a gift of a charity's funds to a political party that supports the charity's views
- ♦ **Don't** make public statements endorsing or denouncing a candidate or political party
- ♦ **Don't** invite candidates to speak at different events in a manner that favours a candidate or political party or host an all candidates meeting in a partisan manner
- ♦ **Don't** publish voting records of only selected candidates or parties on an issue
- ♦ **Don't** post signs in support of, or in opposition to a particular candidate or political party
- ♦ **Don't** explicitly connect the charity's position on an issue to the position taken on the same issue by a candidate or political party. Simply having a position on a topic that is similar to the position of a political party is not partisan. Many charities, particularly religious organizations, have had positions on certain issues long before these issues became "politicized." The key is not to clearly link their position to that of the political party.

2. DO'S

- ♦ **Do** make it clear that you are assisting a candidate or party in your personal capacity if you are an employee, member or leader of a charity and refrain from partisan comments at charity functions
- ♦ **Do** post information on candidates and political parties on the charity's website, provided that it is connected and subordinate to the charity's purpose, reflects the position taken with regard to all political parties and candidates, no political party or candidate is singled out favourably or unfavourably, and there is no explicit direction of how to vote

Charging fair market value rent to a political party for occasional meetings in a charity's facilities is permitted so long as equal access and opportunity are given to all political parties. However, this is a grey area and prolonged association with one party may lead to the conclusion that the charity favours that party.

F. IMPLICATIONS FOR CHARITIES

The CRA Policy Statement provides a workable framework for charities that have the expertise and desire to contribute to public policy development in Canada. In doing so, charities should ensure that their activities are either "charitable" or are "permitted political activities" that fall within the allowable expenditure limits. It is also important to keep careful records of all expenditures with respect to permitted political activities and to follow a consistent methodology as much as possible.

Further, it is important not to lose sight of the fact that the CRA Policy Statement was developed in the context of recognizing the contribution of charities to government policy. The introduction to the Policy Statement affirms that *“Through their dedicated delivery of essential programs, many charities have acquired a wealth of knowledge about how government policies affect people’s lives. Charities are well placed to study, assess, and comment on those government policies.”*